

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ZOSTAVAX (ZOSTER VACCINE	:	MDL NO. 2848
LIVE) PRODUCTS LIABILITY	:	
LITIGATION	:	
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THIS DOCUMENT RELATES TO:	:	
SUE ANN ELMEGREEN	:	
	:	CIVIL ACTION NO. 17-cv-2044
v.	:	
MERCK & CO., INC., et al.	:	
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PRETRIAL ORDER NO. 372

AND NOW, this 4th day of August, 2021, for the reasons set forth in the foregoing Memorandum, it is hereby ORDERED that:

(1) the motion of David R. Elmegreen, as the trustee of The Sue A. Elmegreen Trust, to be substituted as the plaintiff pursuant to Rule 25 of the Federal Rules of Civil Procedure is GRANTED;

(2) the motion of Merck & Co., Inc. and Merck Sharp & Dohme Corp. to dismiss (incorrectly denominated as a motion for summary judgment) for failure to substitute a legal representative on behalf of the deceased plaintiff Sue Ann Elmegreen is DENIED;

(3) the motion of Merck & Co., Inc. and Merck Sharp & Dohme Corp. for summary judgment on plaintiff's claims for failure to warn is DENIED;

(4) the motion of Merck & Co., Inc. and Merck Sharp & Dohme Corp. for summary judgment on plaintiff's claim for breach of express warranty is GRANTED; and

(5) the motion of Merck & Co., Inc. and Merck Sharp & Dohme Corp. for summary judgment on plaintiff's claim for strict liability design defect is GRANTED.

BY THE COURT:

/s/ Harvey Bartle III

J.